

Michelle Steel: State gives food-truck owners indigestion

Operators face bewildering sales-tax system, punitive bureaucracy.

By MICHELLE STEEL/ Vice chairwoman, state Board of Equalization

Many businesses work on a thin profit margin. An overzealous tax assessment could mean the difference between being in business and being closed for good. The state might collect a little more at the risk of a business owner's livelihood, but it will kill jobs, and potential tax revenue in the process.

For catering trucks, this problem is especially pronounced.

California's sales-tax laws on food are so complicated, it's nearly impossible to know how to follow them. A few examples: Cold food is exempt from the sales tax, but hot food is taxable. Hot coffee is exempt, but it becomes taxable when sold in combination with a cold sandwich. Fruit juices, vegetable juices and "other beverages, including bottled water," are exempt, but carbonated beverages are taxable. Want to know how to tax hot chocolate? It takes the Board of Equalization four single-spaced pages to explain.

Add the fact that catering truck operators are supposed to follow these rules while also driving to a location, finding parking, fending off local parking enforcement, cooking, taking orders and charging customers – all in a short period of time – and you have a real problem.

In December 2009, I attended a meeting organized by state Sen. Lou Correa, D-Santa Ana, and was stunned to meet more than 50 catering truck operators who had been caught in a mass audit by the BOE. The operators were charged nearly \$1 million combined, including a 10 percent "negligence" penalty.

Given the fast-paced nature of running a catering truck, most operators include sales tax in the price of their products instead of charging it separately, and they estimate their sales for each reporting period. In this case, many operators were estimating wrong. They had been told to report a flat amount of sales each period. They should have based their estimates on actual sales.

Because most of the operators were going through their first audit and had received incorrect information, I requested that their negligence penalties be removed. I also asked staff to work with the operators to help them gather supporting documentation for their sales, and to provide payment plans if they could not afford their liabilities.

These catering truck operators were not intentionally evading the taxes they owed. They were doing their best with the information they had while struggling to run their businesses at the same time.

We were eventually able to reduce the liabilities of most operators by removing penalties and adjusting the original assessments. But this should never have happened.

In a never-ending drive to control more of our daily lives, Big Government has built a system that rewards increased attempts to squeeze taxpayers for more revenue while ignoring the effects of that system on the businesses that create the revenue, and the jobs, our state so desperately needs.

It would be too much to hope that the Legislature would solve this problem by cutting California's oppressive tax rates or reducing burdensome regulations. Yet there is something that can be done.

I am working with Sen. Correa on legislation that will make collecting sales tax easier for catering truck operators. And I continue to work with the BOE's district offices in Southern California to ensure that taxpayers have the best customer service and timely guidance on the right way to report taxes.

We all have a responsibility to pay the taxes we owe, but not a penny more. If we're going to get our state back on track, it is our duty to make this process as easy and as fair as possible. Chasing down hardworking business owners for a few extra dollars won't cut it.